

ACT No. 2006-354

- 1 SB529
- 2 83194-6
- 3 By Senator Mitchell
- 4 RFD: Finance and Taxation Education
- 5 First Read: 07-MAR-06



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4 ENROLLED, An Act,

5 Relating to elections; to amend Sections 17-10-10,
6 17-10-23, 17-16-6, and 17-16-36, Code of Alabama 1975,
7 relating to absentee balloting; to provide procedures for
8 overseas citizens and military personnel to cast absentee
9 ballots; and to amend Sections 11-43-44, 11-46-21, 11-46-55,
10 and 17-10-12, Code of Alabama 1975, as last amended by Act
11 2006-281 of the 2006 Regular Session, to provide for runoffs
12 in municipal elections to take place six weeks following the
13 general municipal election and to provide further that
14 municipal officials elected at the regular municipal election
15 pursuant to Section 11-46-21 shall assume the duties of their
16 respective offices on the first Monday in November following
17 the election.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. Sections 17-10-10, 17-10-23, 17-16-6, and
20 17-16-36, Code of Alabama 1975, are amended to read as
21 follows:

22 "§17-10-10.

23 "(a) Upon receipt of the absentee ballot, the
24 absentee election manager shall record its receipt thereof on
25 the absentee list as provided in Section 17-10-5 and shall

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1 safely keep the ballot without breaking the seal of the
2 affidavit envelope.

3 "(b) For absentee ballots received by noon on the
4 day of the election, the absentee election manager shall,
5 beginning at noon, deliver the sealed affidavit envelopes
6 containing absentee ballots to the election officials provided
7 for in Section 17-10-11. The election officials shall then
8 call the name of each voter casting an absentee ballot with
9 poll watchers present as may be provided under the laws of
10 Alabama and shall examine each affidavit envelope to determine
11 if the signature of the voter has been appropriately
12 witnessed. If the witnessing of the signature and the
13 information in the affidavit establish that the voter is
14 entitled to vote by absentee ballot, then the election
15 officials shall certify the findings, open each affidavit
16 envelope, and deposit the plain envelope containing the
17 absentee ballot into a sealed ballot box.

18 "No poll worker or other election official shall
19 open an affidavit envelope if the envelope indicates the
20 ballot is an unverified provisional ballot or the affidavit
21 printed thereon is unsigned by the voter or unmarked, and no
22 ballot envelope or ballot therein may be removed or counted.
23 No poll worker or other election official shall open an
24 affidavit envelope if the voter's affidavit signature or mark
25 is not witnessed by the signatures of two witnesses or a

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1 notary public, or other officer, including a military
2 commissioned officer, authorized to acknowledge oaths, and no
3 ballot envelope or ballot therein may be removed or counted.
4 The provision for witnessing of the voter's affidavit
5 signature or mark in Section 17-10-7 goes to the integrity and
6 sanctity of the ballot and election. No court or other
7 election tribunal shall allow the counting of an absentee
8 ballot with respect to which the voter's affidavit signature
9 or mark is not witnessed by the signatures of two witnesses 18
10 years of age or older or a notary public, or other officer,
11 including a military commissioned officer, authorized to
12 acknowledge oaths, prior to being delivered or mailed to the
13 absentee election manager.

14 "The absentee ballots shall upon the closing of the
15 polls be counted and otherwise handled in all respects as if
16 the absentee voter were present and voting in person. As
17 regards municipalities with populations of less than 10,000,
18 in the case of municipal elections held at a time different
19 from a primary or general election, the return mail envelopes
20 containing the ballots shall be delivered to the election
21 official of the precinct of the respective voters, unless the
22 city or town having a population of less than 10,000
23 inhabitants has, by permanent ordinance adopted six months
24 prior to the municipal election, established a procedure for

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1 the appointment of absentee election officials pursuant to
2 subsection (c) of Section 11-46-27.

3 "(c) Absentee ballots cast in a second primary
4 election for federal, state, or county office by individuals
5 voting pursuant to the Uniformed and Overseas Citizens
6 Absentee Voting Act, 42 U.S.C. 1973ff et seq., and received
7 after noon on the day of the second primary election shall be
8 opened and counted at the same time as the verified
9 provisional ballots. At noon seven days after the second
10 primary election, the absentee election manager shall deliver
11 the sealed affidavit envelopes containing absentee ballots to
12 the officials provided for in subsection (f) of Section
13 17-10A-2. The officials shall call the name of each voter
14 casting an absentee ballot in the presence of watchers
15 designated by any interested candidates and shall examine each
16 affidavit envelope to determine if the signature of the voter
17 has been appropriately witnessed. If the witnessing of the
18 signature and the information in the affidavit establish that
19 the voter is entitled to vote by absentee ballot, then the
20 election officials shall certify the findings, open each
21 affidavit envelope, and deposit the plain envelope containing
22 the absentee ballot into a sealed ballot box.

23 "No election official shall open an affidavit
24 envelope if the affidavit printed thereon is unsigned by the
25 voter or unmarked, and no ballot envelope or ballot therein

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1 may be removed or counted. No election official shall open an
2 affidavit envelope if the voter's affidavit signature or mark
3 is not witnessed by the signatures of two witnesses or a
4 notary public, or other officer, including a military
5 commissioned officer, authorized to acknowledge oaths, and no
6 ballot envelope or ballot therein may be removed or counted.
7 The provision for witnessing of the voter's affidavit
8 signature or mark in Section 17-10-7 goes to the integrity and
9 sanctity of the ballot and election. No court or other
10 election tribunal shall allow the counting of an absentee
11 ballot with respect to which the voter's affidavit signature
12 or mark is not witnessed by the signatures of two witnesses 18
13 years of age or older or a notary public, or other officer,
14 including a military commissioned officer, authorized to
15 acknowledge oaths, prior to being delivered or mailed to the
16 absentee election manager.

17 "The absentee ballots described in this subsection
18 shall be opened, counted, and tabulated. The results of the
19 absentee ballots counted and tabulated on election day shall
20 be amended to include the results of the absentee ballots
21 described in this subsection.

22 "In all other respects, unless otherwise
23 specifically provided by law, the absentee ballots described
24 in this subsection shall be treated as other absentee ballots.

25 "§17-10-23.

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1 "No absentee ballot shall be opened or counted if
2 received by the absentee election manager by mail, unless
3 postmarked as of the date prior to the day of the election and
4 received by mail no later than noon on the day of election,
5 or, if received by the absentee election manager by hand
6 delivery, unless so delivered to the absentee election manager
7 not later than 5:00 p.m. on the day prior to the election.

8 "The above provision does not apply in the case of
9 individuals voting absentee pursuant to the Uniformed and
10 Overseas Citizens Absentee Voting Act (UOCAVA), 42 U.S.C.
11 1973ff et seq., when those individuals are voting in a second
12 primary election for a federal, state, or county office. In
13 the case of UOCAVA voters voting absentee in a second primary
14 election for a federal, state, or county office, no absentee
15 ballot shall be opened or counted, if received by the absentee
16 election manager by mail, unless postmarked as of the day of
17 the second primary election and received by mail no later than
18 noon seven days after the second primary election.

19 "Except as to provisional absentee ballots that have
20 not been verified by seven days after the election, any
21 election official who fails to count a legal vote cast by
22 absentee ballot shall be guilty of a Class C felony and
23 punished as provided by law.

24 "§17-16-6.

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1 "Presidential preference primaries and primary
2 elections, except special primary elections, held at the
3 expense of the state or counties, shall be held on the first
4 Tuesday in June. When necessary, as provided in this chapter,
5 a second or runoff primary election shall be held on the sixth
6 Tuesday following the primary election. Any second primary
7 shall be held by the same election officers who held the first
8 primary, and be held at the same places as the first primary
9 election. No primary shall be held by any political party
10 except as herein provided. Primary elections herein provided
11 for shall be held at the regular polling places established
12 for the purpose of holding general elections.

13 "§17-16-36.

14 "(a) At the respective meetings of the respective
15 executive committees, the county executive committee shall, as
16 to candidates in the primary election for office, except
17 candidates for county office, publicly ascertain, determine
18 and declare whether any candidate for office in the primary
19 election has received a majority of the votes cast for the
20 office, and, if so, declare the candidate the nominee of the
21 party for the office for which he or she was a candidate and
22 for which he or she received a majority of the votes cast for
23 that office in the primary election.

24 "(b) If no candidate receives a majority of all of
25 the votes cast in the primary election for any one office or

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1 offices for the nomination to which there were more than two
2 candidates, then there shall be held a second primary election
3 on the sixth Tuesday following the primary election, and the
4 chairman of the state executive committee shall certify to the
5 Secretary of State, immediately upon the completion of the
6 canvass, the names of the two candidates of his or her party
7 to receive the highest number of votes in the first primary
8 election for office or offices, except county officers, and
9 who are to be voted for in the second primary election. The
10 chairman of each county executive committee shall, immediately
11 upon the completion of the canvass, certify to the probate
12 judge of the county the names of the two candidates who
13 received the highest number of votes in the first primary for
14 nomination to any county office. The Secretary of State shall,
15 within not more than six days from the date the certificate is
16 received from the chairman of the state executive committee,
17 certify to the probate judge of any county where a second
18 primary election is to be held the name or names of the
19 candidates certified to him or her as herein provided by the
20 chairman of the state executive committee. The probate judge
21 of each county in Alabama shall in the manner and form as
22 required by this chapter and the general laws of Alabama, have
23 prepared and printed all election supplies and all ballots to
24 be voted in the second primary election, which ballots shall
25 contain, under appropriate headings or titles of the offices

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1 to be filled, the names of the two candidates for each office
2 so certified to the judge of probate by the Secretary of State
3 and the chairman of the county executive committee, as herein
4 required, as well as other matters as are required by this
5 chapter and the general laws of Alabama, on ballots for the
6 first primary election.

7 "(c) At the second primary election, no person can
8 be a candidate except the two persons who receive the highest
9 number of votes for the offices for which they were candidates
10 in the first primary election.

11 "(d) The returns from the second primary election
12 shall be made and the votes canvassed, tabulated, and
13 certified and the results declared in the same manner provided
14 in this chapter for making, canvassing, tabulating,
15 certifying, and declaring the results of the first primary
16 election. The county executive committee of the parties
17 participating in the primary election shall meet at the
18 courthouse of their respective counties not later than the
19 second Friday following the second primary election and
20 receive the returns, canvass, and tabulate the same by
21 precinct and publicly declare the results thereof. The
22 chairman of each county executive committee shall forthwith,
23 and not later than noon on the second Monday following the
24 primary election, certify and return to the chairman of the
25 state executive committee a statement and tabulation by

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1 precincts of the results of the second primary election and of
2 the number of votes received by each candidate for office
3 therein voted for except candidates for county office. Not
4 later than noon on the third Wednesday following the second
5 primary election, the state executive committee, or a
6 subcommittee thereof as may have been appointed by the
7 chairman thereof for that purpose, shall meet at the State
8 Capitol in Montgomery and receive the returns and canvass and
9 tabulate the same by counties, and publicly declare on that
10 day the result thereof as to all candidates voted for, except
11 as to candidates for county office which results shall be
12 final. At the respective meetings of the respective executive
13 committees, the county executive committee shall, as to
14 candidates for county office voted for in the second primary
15 election, and the state executive committee shall, as to
16 candidates for office in the second primary election voted for
17 therein, except candidates for county office, publicly
18 ascertain and determine the candidates receiving a majority of
19 all of the votes cast in the second primary election for any
20 one office, and the candidates so ascertained and determined
21 to have received a majority of all of the votes cast in the
22 second primary election for the office shall be declared the
23 nominee of the party for office by the respective county and
24 state executive committees. Thereupon and immediately upon the
25 completion of the canvass, the chairman thereof shall certify

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1 to and file with the probate judge of his or her county the
2 names of those who have been nominated in the first or the
3 second primary election or as otherwise authorized or provided
4 by this chapter, as candidates of his or her party for county
5 offices; and in like manner, and immediately upon the
6 completion of the canvass, by the state executive committee,
7 or subcommittee thereof, the chairman of the state executive
8 committee shall certify to and file with the Secretary of
9 State the names of those who have been nominated in the first
10 or second primary election or as otherwise authorized or
11 provided by this chapter as candidates of his or her party for
12 office, except candidates for county office, and the names of
13 the persons so certified shall be placed upon the official
14 ballot of the general election to be held in November next
15 thereafter as the candidates of the party for the offices for
16 which they, respectively, have been so nominated.

17 " (e) The state executive committee or subcommittee
18 as provided in this section shall also provide the Secretary
19 of State with the second primary election returns by precincts
20 according to county on a form authorized by the Secretary of
21 State on the third Wednesday following the secondary primary,
22 county and municipal returns excepted."

23 Section 2. Sections 11-43-44, 11-46-21, 11-46-55,
24 and 17-10-12, Code of Alabama 1975, as last amended by Act

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1 2006-281 of the 2006 Regular Session, are amended to read as
2 follows:

3 "§11-43-44.

4 "The members of such council shall, on the first
5 Monday in November after their election, assemble and organize
6 the council.

7 "§11-46-21.

8 "(a) The regular municipal elections in cities and
9 towns shall be held on the fourth Tuesday in August 1984, and
10 quadrennially thereafter, and, when necessary as provided in
11 subsection (d) of Section 11-46-55, a second or runoff
12 election shall be held on the sixth Tuesday next thereafter
13 following the regular election.

14 "(b) Special elections shall be held on the second
15 or fourth Tuesday of any month when ordered by the municipal
16 governing body; provided, that notice of such election shall
17 be published in the manner prescribed in Section 11-46-22 on
18 or before the corresponding Tuesday of the second month
19 preceding the month in which the special election is to be
20 held.

21 "(c) Municipal officers elected at regular elections
22 shall assume the duties of their respective offices on the
23 first Monday in November following their election unless
24 otherwise provided in this article and shall serve until their
25 successors are elected and qualified.

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1 "§11-46-55.

2 "(a) On the first Tuesday next after the election,
3 by the hour of 12:00 noon, the municipal governing body shall
4 proceed to open the envelopes addressed to the governing body
5 which have been delivered by the several returning officers to
6 the municipal clerk, canvass the returns, and ascertain and
7 determine the number of votes received by each candidate and
8 for and against each proposition submitted at the election. If
9 it appears that any candidate or any proposition in the
10 election has received a majority of the votes cast for that
11 office or on that question, the municipal governing body shall
12 declare the candidate elected to the office or the question
13 carried, and a certificate of election shall be given to the
14 persons by the municipal governing body or a majority of them,
15 which shall entitle the persons so certified to the possession
16 of their respective offices immediately upon the expiration of
17 the terms of their predecessors as provided by law.

18 "(b) If a single office is to be filled at the
19 election and there is more than one candidate therefor, then
20 the majority of the votes cast for the office in the election
21 shall be ascertained by dividing the total votes cast for all
22 candidates for the office by two, and any number of votes in
23 excess of one half of the total votes cast for all candidates
24 for the office shall be a majority within the meaning of
25 subsection (a) of this section.

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1 "(c) If two or more offices constituting a group are
2 to be filled and there are more candidates for election than
3 there are offices, then the majority of the votes cast for the
4 office in the election shall be ascertained by dividing the
5 total vote cast for all candidates for the offices by the
6 number of positions to be filled and then dividing the result
7 by two. Any number of votes in excess of the number
8 ascertained by the last division shall be the majority
9 prescribed in subsection (a) of this section as necessary for
10 election. If in ascertaining the result in this way it appears
11 that more candidates have obtained this majority than there
12 are positions to be filled, then those having the highest
13 vote, if beyond the majority just defined shall be declared
14 elected to fill such positions.

15 "(d) If no candidate receives a majority of all the
16 votes cast in such election for any one office or offices for
17 the election to which there were more than two candidates,
18 then the municipal governing body shall order a second or
19 "runoff" election to be held on the sixth Tuesday next
20 thereafter following the regular election, at which election
21 the two candidates having received the most and the second
22 most votes, respectively, shall be candidates, and the person
23 receiving the highest number of votes for that office in the
24 runoff election shall be declared elected. If only two
25 candidates are standing for election for any one office or

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1 offices and neither candidate receives a majority, then the
2 municipal governing body shall order a second or "runoff"
3 election to be held on the sixth Tuesday next thereafter
4 following the regular election, at which election the two
5 candidates shall be candidates, and the person receiving the
6 highest number of votes for that office in the runoff election
7 shall be declared elected. In the event one of the candidates
8 for a particular office in the runoff election withdraws, then
9 there need not be a second election to fill the office nor
10 shall the name of either the party so withdrawing or the
11 remaining candidate be printed on the ballot of any second
12 election held under the provisions of this article. This
13 second election shall be held by the same election officers
14 who held the first election and at the same places the first
15 election was held. If there should be a tie vote cast at any
16 runoff election, then in the event the tie shall be decided by
17 the municipal governing body. A vote for a particular
18 candidate by a majority of those members eligible to vote of
19 the governing body shall be necessary to decide the election
20 in his or her favor. The municipal clerk shall file a copy of
21 each certificate of election in the office of the judge of
22 probate of the county in which the city or town is situated,
23 and the judge shall file the certificate in the same manner
24 that he or she files the declaration of the result of
25 elections to county offices.

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1 "§17-10-12.

2 "(a) Not less than 40 days prior to the holding of
3 any election, except a municipal election, to which this
4 chapter pertains, or in the case of a run-off primary
5 election, not more than seven days after the first primary
6 election, the officer charged with the printing and
7 distribution of the official ballots and election supplies
8 shall deliver to the absentee election manager of each county
9 in which the election is held or to the person designated to
10 serve in his or her place a sufficient number of absentee
11 ballots, envelopes, and other necessary supplies. Not more
12 than seven days after the last day to qualify as a candidate
13 in a municipal election, or in the case of a run-off municipal
14 election, not more than 14 days after the first election, or
15 in the case of a municipal election held for a purpose other
16 than the election of municipal officers, not more than seven
17 days after the giving of notice of the election, the officer
18 charged with the printing and distribution of the official
19 ballots and election supplies shall deliver to the absentee
20 election manager of the municipality in which the election is
21 held, or to the person designated to serve in his or her
22 place, a sufficient number of absentee ballots, envelopes, and
23 other necessary supplies. If the absentee election manager is
24 a candidate with opposition in the election, he or she shall
25 immediately, upon receipt of the ballots, envelopes, and

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1 supplies, deliver them to the person authorized to act in his
2 or her place, as provided in Section 17-10-13.

3 "(b) Any registered elector who requires emergency
4 treatment of a licensed physician within five days of an
5 election may apply for an emergency absentee ballot for the
6 election and may vote by returning the absentee ballot no
7 later than noon on the day the election is held. The attendant
8 physician shall describe and certify the circumstances as
9 constituting an emergency on a special form designed by the
10 Secretary of State and provided by his or her office to local
11 absentee election managers. The special form shall be attached
12 to the application.

13 "(c) Any registered elector whose name appears on
14 the poll list of qualified voters may vote by an emergency
15 absentee ballot if he or she is required by his or her
16 employer under unforeseen circumstances to be out of the
17 county on an emergency business trip on election day. Under
18 such circumstances, the applicant shall apply for an emergency
19 absentee ballot at the office of the absentee election manager
20 no later than the close of the business day one day prior to
21 the election. The applicant shall complete and file an
22 application form designed by the Secretary of State for
23 emergency absentee voters. The form shall contain an affidavit
24 which the applicant shall sign or swear acknowledging that he
25 or she was not aware of the out of county business requirement

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1 prior to five days before the election. An applicant who meets
2 the requirements of this subsection may vote by an emergency
3 absentee ballot. After voting the ballot, the voter shall hand
4 the ballot to the absentee election manager."

5 Section 3. The Legislature notes that Section
6 17-10-12 was also amended during the 2006 Regular Session by
7 HB479, which is now enacted as Act 2006-281. It is the intent
8 of the Legislature that where conflicts exist between this act
9 and the amendment of Section 17-10-12 in HB479, the provisions
10 in this act shall control.

11 Section 4. This act shall become effective following
12 its passage and approval by the Governor, or its otherwise
13 becoming law. This act shall not be enforced until it is
14 precleared pursuant to Section 5 of the Voting Rights Act, 42
15 U.S.C. § 1973c.

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Lacy Baxley
President and Presiding Officer of the Senate

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Speaker of the House of Representatives

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Senate 30-MAR-06
I hereby certify that the within Act originated in and passed
the Senate, as amended.

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McDowell Lee
Secretary

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House of Representatives
Amended and passed 05-APR-06

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Senate concurred in House amendment 05-APR-06

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By: Senator Mitchell

APPROVED April 13, 2006

TIME 1:20 p.m.

Bob Riley
GOVERNOR

Alabama Secretary Of State

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